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Notice of Allowability

Application No.

09/833,119

Examiner

Fred Ferris

Applicant(s)

HESS, CORY D.

Art Unit

2128

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 9 August 2005.
2. ☒ The allowed claim(s) is/are 18-24.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

1. *This Office Action is responsive to applicant's After Final Amendment filed on 9 August 2005. Applicants have now cancelled claims 1-17. Claims 18-24 were previously allowed over the prior art of record.*

Response to Arguments

2. *Regarding applicants comments relating to claims 1-17:* While applicants have now cancelled claims 1-17, the examiner maintains that the claim interpretation is consistent with the broadest reasonable interpretation of a skilled artisan based on the recited claim language as required by MPEP 2111 [R-1], and that the claimed elements are clearly rendered obvious in view of *Change* and *Frigo* as recited in the previous 103(a) rejections. Since applicants have now cancelled claims 1-17, and claims 18-24 were previously allowed, this application is now in condition for allowance.

Allowable Subject Matter

3. *Claims 18-24 have been allowed over the prior art of record.*

The following is an examiner's statement of reasons for allowance:

Applicants are disclosing a method for analyzing the performance of an optical span design by selecting components, optimizing the span, and performing margin analysis to determine the amount of change in the operable optical span. This has been disclosed in the prior art of record.

While these elements are individually disclosed in the prior art, the prior art of record does not meet the conditions as suggested in MPEP section 2132, namely:

*"The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an **ipsissimis verbis** test, i.e., identity of terminology is not required. **In re Bond**, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990)."*

In particular, the prior art of record does not disclose the specific sequence of method steps that include:

- *receiving incremental change parameters made to operable optical span;*
- *incorporating changes into component in accordance with case type;*
- *analyzing changed optical span & determining whether span is operable;*
 - *determining if changed optical span is an operable span*
 - *determining if all components and case types of optical span are analyzed*
 - *presenting the margin analysis results*

Further, the examiner has interpreted the claimed case type as specifically defined in applicant's specification page 6, line 21 to page 9, line 9, and in Figures 2 & 3B.

The closest prior art uncovered during examination teaches certain limitations of the claimed invention as follows:

- *"Network Simulations with OPNET", X. Chang, Proceedings of 1999 Winter Simulation Conference, IEEE 1999: Teaches the commercially available OPNET network simulation and modeling tool used for the development and analysis of*

communications networks. The OPNET Modeler provides a GUI based user interface for developing a simulated network model including a Network Editor, Node Editor, Process Editor, Simulation & Debugging tool, Probe editor, Analysis tool, Filter tool, Animation tool, and a Model Library that includes models for popular network architectures (fiber optic, LAN, Ethernet, x.25, etc.), but does not explicitly disclose the specific sequence of method steps in accordance with case type as noted above.

- *U.S. Patent 5,760,940 issued to Frigo: Teaches determining when a specified threshold power margin at the destination of an optical network fails to meet a threshold (selected) power margin. Frigo teaches determining (by comparing) when power at the received end of the optical span (network) is inoperable by detecting when the power exceeds a threshold (selected) power margin (i.e. the measured power exceeds desired measured power), but does not explicitly disclose the specific sequence of method steps in accordance with case type as noted above.*

The features noted above relating to the specific sequence of method steps as noted above and now recited in the independent claim 18 renders the claimed invention non-obvious over the prior art of record. Dependent claims 19-24 are deemed allowable as depending from independent claim 18.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

6. *Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fred Ferris whose telephone number is 571-272-3778 and whose normal working hours are 8:30am to 5:00pm Monday to Friday. Any inquiry of a general nature relating to the status of this application should be directed to the group receptionist whose telephone number is 571-272-3700. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jean Homere can be reached at 571-272-3780.*

The Official Fax Numbers are:

Official (703) 872-9306

*Fred Ferris, Patent Examiner
Simulation and Emulation, Art Unit 2128
U.S. Patent and Trademark Office
Randolph Building, Room 5D19
401 Dulany Street
Alexandria, VA 22313
Phone: (571-272-3778)
Fred.Ferris@uspto.gov
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*Fel Ferris
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